

Remarks/Arguments

Claims 1, 3-8, 10-12, 15-17, 21, 23-25, and 36, as amended, are pending in the application for the Examiner's review and consideration. Claims 2, 9, 13-14, 18-20, 22, and 26-35 have been canceled without prejudice. The right to prosecute the subject matter of any of the canceled claims in this or in a continuation, continuation-in-part, or divisional application is hereby expressly reserved.

Claim Amendments:

Claim 1 has been amended to recite process steps useful for preparing the composition. These amendments are supported, for example, at page 6, line 30 to page 7, line 16 and at page 10, lines 15-25 of the specification as filed. Claim 1 has also been amended to recite that the composition comprises about 5% to about 25% (w/v) ascorbic acid. This amendment is supported, for example, at page 6, lines 22-29 of the specification as filed. In addition, Claim 1 has been amended to recite that "10% to 50%" of the ascorbic acid is dissolved in water at a temperature of between about 60°C to about 90°C to provide an aqueous ascorbic acid solution of at least 20% (w/v). This amendment is supported, for example, at page 7, lines 12 to 16 of the specification as filed.

Claims 3, 5-8, 10, 11, and 17 have been amended for clarity. The amendment of claims 6, 8, and 10 to remove the recitation "and mixtures thereof" simply removes a redundancy and does not alter the scope of the claims. Claim 1, from which claims 6, 8, and 10 directly or indirectly depend, recites a topical composition "comprising" the recited components. The open-ended transitional phrase comprising allows for the inclusion of additional components, including the "mixtures" previously recited in claims 6, 8, and 10.

Claims 21, 23, 24, and 25 have been amended to depend from claim 1. These amendments are supported, for example at page 8, lines 9-12 (claims 21 and 23), page 6, lines 22-29 (claim 24), and page 10, lines 26-31 (claim 25) of the specification as filed.

Claim 36 has been added. New claim 36 is supported, for example, at page 6, lines 22-29 of the specification as filed.

No new matter has been added to the claims by these amendments.

Election/Restrictions:

The Office has withdrawn claims 32-35 from the application under 35 U.S.C. § 121, as directed to an invention that is allegedly independent or distinct from the invention originally presented for prosecution. In response, the constructive election of the invention originally presented for prosecution is hereby confirmed, without traverse. New claim 36 depends from claim 1, and, therefore, reads on the elected group. Claims 32-35 have been canceled without prejudice in order to advance prosecution of the application.

Claim Rejections – 35 U.S.C. § 112:

Claims 1, 3-8, 10-12, 15-18, 21, and 23-25 stand rejected under 35 U.S.C. § 112, first paragraph as allegedly lacking written description for the phrase “at least 10% of the ascorbic acid is provided in the composition as a concentrated ascorbic acid solution” because, according to the Office, the concentrated ascorbic acid solution is subsequently mixed with additional water to form the recited composition, and, therefore is no longer in a concentrated form. Office Action, pp. 2-3. Claims 1, 3-8, 10-12, 15-18, 21, and 23-25 also stand rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite on similar grounds. *Id.* These rejections have been rendered moot as to claim 18 by the cancellation of the claim without prejudice. As to claims 1, 3-8, 10-12, 15-17, 21, and 23-25, the claims have been amended to recite the aqueous ascorbic acid solution of at least 20% (w/v) as part of the presently claimed process to prepare the composition, rather than as a component of the composition. Accordingly, it is believed that these §112 rejections have been overcome, and should be withdrawn.

Conclusion:

In view of the foregoing amendments and remarks, it is respectfully submitted that the claims are in condition for allowance. Early and favorable action by the Examiner is earnestly solicited. If any outstanding issues remain, the Examiner is invited to contact the undersigned at (212) 497-7731 to discuss the same.

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No fee is believed to be due for the submission of this Amendment. Should any fees be required, please charge all such fees to Wilson, Sonsini, Goodrich & Rosati Deposit Account No. 23-2415 (36091-701.302).

Respectfully submitted,

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